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In the High Court of Judicature for Rajasthan
Jaipur Bench

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Cr. Misc. Petition No.1297/1998
Prabhati Lal S/o Panchuram Koli **Versus** State

Date of Order :: 10/10/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. S.R.Surana, for petitioner (complainant)
Mr. Arun Sharma, Public Prosecutor.
Mr. Ghanshyam Brijvasi, for respondent Nos.2-4 (accused)

Instant petition is directed against order dt.22/09/98 in Cr.Rev.-7/98 whereby Addl. Sess. Judge Bandikui (Dausa) set aside the order dt. 07/01/95 taking cognizance by Addl. Chief Judl Mag. Bandikui; and accordingly discharged respondent Nos.2 to 4 of offence U/Ss 419, 467, 468 & 471, IPC in Cr. Case No.17/95.

Facts giving rise to instant petition are that complainant (petitioner) was landless person, to whom State Government allotted a piece of land bearing Khasra No.1/5 in village Urwari Tehsil Baswa (Dausa district) measuring 10 bighas, which was being cultivated by him. Petitioner is named as Prabhati Lal S/o Panchulal. Another person similarly named as Prabhatilal who is S/o Hema Koli & resident of village Shyalavas Khurd while making his personification as of petitioner (Prabhati s/o Panchu Koli) who has right & title over land in

question, by making change in name of his father "Hema Koli" to "Panchu Koli" sold the land to respondent NO.2-Mohanlal by getting it attested through respondent Nos.3 & 4 and got sale deed whereof registered in the office of Sub Registrar - as a consequence whereof, respondent No.2 got it mutated in his own name on 01/07/92. Petitioner challenged such mutation initially by separate proceedings in Revenue Court but as it was a case of preparation of forged document for transfer of land at the instance of Prabhati S/o Hema Koli, the petitioner filed a complaint which was sent for investigation U/s 156(3) CrPC, on which criminal case was registered at PS Bandikui for offences U/Ss 420/468/471, IPC, against Prabhati S/o Hema Koli & respondent Nos.2 to 4. After investigation, the police filed charge sheet against against Prabhati S/o Hema Koli and respondent Nos.2 to 4 for offences U/s 419, 467, 468 & 471, IPC and after taking note of charge sheet and its accompanied documents, learned Magistrate took cognizance of offences U/s 419, 467, 468 & 471, IPC and issued process against Prabhati S/o Hema Koli and respondent Nos.2 to 4 vide order dt.07/01/95 - against which respondent Nos.2 to 4 preferred revision petition which was allowed by Court of

Revision setting aside order dt.07/01/95 of taking cognizance - as a consequence whereof, respondent Nos.2 to 4 were discharged vide order dt.22/09/98. Hence this petition.

Counsel for petitioner while supporting order of Magistrate taking cognizance of offences submits that not only in complaint but also statements recorded in course of investigation it has come on record that Mohanlal (respondent NO.2) being purchaser was aware of the document being fabricated on the part of Prabhati S/o Hema Koli by making his personification as of petitioner because Mohanlal was also resident of nearby place and it was within his knowledge at the time of sale deed being registered that the person (Prabhati S/o Hema Koli) who was selling the land in question to him, was not in fact owner of the land and by such personification, creation of forged document has resulted in depriving the petitioner of his land and in such circumstances, there was prima facie material constituting commission of offence on the part of respondents as well - on the basis whereof, learned Magistrate rightly took cognizance but despite there being aforesaid material, Court of Revision has wrongly proceeded on the premise that Mohanlal purchased the land in good faith inasmuch

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as there has been a litigation pending in between the parties before civil court, as such no offence can be said to be made out against accused respondents.

Counsel submits that pendency of civil suit is in no manner remotely related to commission of criminal offence on the part of any of accused persons and that apart, the fact recorded by Court of Revision about land being purchased in good faith, can at best be his defence in course of trial and which was not required to be looked into any further at the stage of taking cognizance, while only fact required to be looked into was as to whether material disclosed from record prima facie constitutes commission of offence on the part of the accused named in criminal complaint or not; but Court of revision has exceeded his jurisdiction in taking note of plea which could be considered in course of trial, while passing order impugned so as to discharge accused respondents, which has resulted in miscarriage of justice warranting interference.

Counsel for respondent Nos.2 to 4 (accused) on the other hand while supporting the order impugned, submits that Court of Revision has applied its judicial mind and has given cogent

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reasons while passing order impugned discharging the accused respondents and it does not call for interference.

I have considered rival contentions of both the parties, and with their assistance, examined material on record. While taking cognizance only fact which has to be looked into by Court is as to whether there is prima facie material on record to draw suspicion of fact about commission of offence on the part of accused and that alone is sufficient to proceed for taking cognizance and issue process for summoning the offender. At the cost of reiteration it clarified that at the time of taking cognizance, Court has to consider only averments made either in complaint or in the charge sheet submitted U/s 173 CrPC alongwith accompanied material collected in course of investigation and there is no such requirement to embark upon the Court to sift or weigh the evidence scrupulously so as to conclude as to whether offence is made out or not for ultimate conviction for such an offender sought to be summoned for prosecution invoking S.190 or S.202, CrPC, which does not require any adjudication to be made about the guilt or otherwise of person against whom complaint is preferred.

In **Rashmi Kumar Vs. Mahesh K.Bhada (1997 (2) SCC 397)** Apex Court has examined as to what the Magistrate has to take note of at the stage of taking cognizance :-

"It is fairly settled legal position that at the time of taking cognizance of the offence the Court **has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be.** It was held in **State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164]** that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters. If it is a charge-sheet filed under Section 173 of the Code, the facts stated by the prosecution in the charge-sheet, on

the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the court to proceed further in the matter. Thus **it is not the province of the court at that stage to embark upon and sift the evidence to come to the conclusion whether offence has been made out or not."**

In **M.Krishnan Vs. Vijay Singh (2001(8) SCC 645)**, Apex Court observed : -

"The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to criminal proceedings. Accepting such a general proposition would be against provisions of law inasmuch as in all case of cheating and fraud, in the whole transaction, there is generally some element of civil nature. The proceedings could not be quashed only because the respondents had filed a civil suit. If mere pendency of a suit is made a ground for quashing criminal proceedings, the unscrupulous litigants, apprehending criminal action against them would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such

proceedings. Such a course cannot be the mandate of law."

In **Kamladevi Agrawal Vs. State W.B. (2002 (1) SCC 555)**, Apex Court observed that scope of civil & criminal proceedings and standard of proof required in both matters is different and distinct; whereas in civil proceedings, the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt". Apex Court observed :

"7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. **Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.**"

17. .. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with procedure as prescribed

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under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

In instant case, from the facts averred in complaint and material collected in course of investigation submitted alongwith report U/s 173, CrPC, which were required to be looked into by Court of Revision on the question of taking cognizance taken by learned Magistrate under order impugned, it is clear that there was specific allegation made in written complaint of petitioner and so also in statements recorded U/s 161 CrPC as is evident from report submitted U/s 173, along with challan papers, that respondent Nos.2 to 4 were indulged in forgery of documents and wrongful gain on their basis. However, explanation taken note of by Court of Revision, can be the defence of the accused but was not at all required to be looked into at the stage of taking cognizance. Even from material on record consisting of complaint and statements recorded during investigation, prima facie shows that accused respondents knowing each other were all residents of nearby village and identification by respondent 3 & 4 is not of purchaser (Mohanlal) but of Prabhati S/o Hema Koli

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who has not filed revision petition. The facts considered by Court of revision that respondents (revision petitioners) were bonafide purchaser and attesting witnesses to sale deed in question and transaction of transfer of land was in good faith and that apart, there has been civil suit pending between the parties as well, and respondent 3 & 4 are merely attesting witnesses, can be evaluated only at the stage of trial and not while taking cognizance of offence.

In view of what has been observed (supra), the complaint filed by petitioner did prima facie disclose the commission of an offence and the circumstances which weigh with the Court of Revision for quashing the order taking cognizance against respondents, are not legally sustainable and what has been observed by Court of Revision vide order impugned, is contrary to the settled position of law and is thus not sustainable.

Consequently, misc. petitions succeeds and is hereby allowed. Order dt.22/09/98 of Court of Revision (Addl. Sess. Judge Bandikui) in Cr.Rev.-7/98 is hereby quashed and order dt.07/01/95 of trial Magistrate is upheld. Record be sent back forthwith to trial Court to proceed in accordance with law and expedite the trial.

(Ajay Rastogi), J.